

**TENNESSEE STATE BOARD OF EQUALIZATION**  
**BEFORE THE ADMINISTRATIVE JUDGE**

IN RE:	Hospital of Morristown Inc.	)	Hamblen County
	Property ID: 033L C 001.00	)	Appeal No. 87344
		)	
	Tax Year 2013	)	

**INITIAL DECISION AND ORDER**

**Statement of the Case**

The subject property is presently valued as follows:

<b><u>LAND VALUE</u></b>	<b><u>IMPROVEMENT VALUE</u></b>	<b><u>TOTAL VALUE</u></b>	<b><u>ASSESSMENT</u></b>
\$328,300	\$12,970,100	\$13,298,400	\$5,319,360

An appeal has been filed on behalf of the property owner with the State Board of Equalization. The undersigned administrative judge conducted a hearing in this matter on May 15, 2014, in Morristown, Tennessee. The taxpayer was represented by Marshall Albritton, Esq. The assessor of property, J. Keith Ely, represented himself. Also in attendance at the hearing were Donnie Osborne, a consultant who prepared the valuation analysis relied on by the taxpayer, and Steve Sparks, an appraiser who appeared as a methodology expert on behalf of the taxpayer.

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

Subject property consists of a 3.26 acre parcel improved with a hospital containing approximately 126,000 square feet originally constructed in 1969.<sup>1</sup> The hospital, commonly

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<sup>1</sup> Mr. Osborne's analysis indicates subject parcel contains 3.86 acres. The property record card indicates that although the deed calls for 3.86 acres, the assessor's mapping of the tract results in only 3.26 acres. Mr. Osborne's analysis assumes the hospital contains a total of 108,500 (rounded) square feet whereas the property record card indicates 126,000 square feet (rounded). The administrative will assume the official records are correct as it is unclear how Mr. Osborne derived his estimate. Moreover, Mr. Ely's cross-examination of Mr. Osborne suggests that certain permits may have been missed.

known as Lakeway Regional Hospital, is located at 726 McFarland Street in Morristown, Tennessee.

The taxpayer contended that subject property should be valued at \$7,110,000. In support of this position, the taxpayer relied primarily on the testimony and written analysis of Mr. Osborne. Essentially, Mr. Osborne prepared cost and sales comparison approaches which he maintained support value indications of \$7,110,000. As discussed in footnote 1, Mr. Osborne's analysis assumed the hospital contains 108,500 (rounded) square feet. He testified that his conclusion of value would be \$8,200,000 (rounded) using the assessor's records which indicate 126,000 (rounded) square feet.

The assessor contended that subject property should remain valued at \$13,298,400. In support of this position, the property record card was introduced into evidence as part of collective exhibit #2. Although the assessor's exhibit included information concerning hospital sales, Mr. Ely did not introduce a sales comparison approach as such. Rather, the sales information was offered to discredit Mr. Osborne's sales comparison approach. Similarly, although Mr. Ely's exhibit included Marshall & Swift hospital classifications and depreciation table, he did not offer a cost approach using Marshall & Swift. Indeed, as will be discussed below, Mr. Ely testified that he did not challenge the accuracy of Mr. Osborne's estimates of replacement cost or depreciation. Nonetheless, Mr. Ely asserted that subject property should be valued in accordance with the property record card.

The basis of valuation as stated in Tennessee Code Annotated § 67-5-601(a) is that "[t]he value of all property shall be ascertained from the evidence of its sound, intrinsic and immediate value, for purposes of sale between a willing seller and a willing buyer without consideration of speculative values. . ."

After having reviewed all the evidence in the case, the administrative judge reluctantly finds that the subject property should be valued at \$8,200,000. As will be discussed below, the administrative judge finds that subject property should be valued by a cost approach utilizing Mr. Ely's assumed square footage and Mr. Osborne's assumed per square foot replacement cost and depreciation. The administrative judge has "reluctantly" reached this conclusion because of the glaring deficiencies in the proof and Mr. Osborne's lack of credibility. Indeed, the administrative judge has been conducting hearings for the State Board of Equalization for approximately thirty years and this is only the second time finds it appropriate to quote the legendary sportscaster Howard Cosell. During the course of an especially poorly played game, Cosell stated that "it is a shame either team has to win this game." Respectfully, the administrative judge finds it a shame that he has to actually adopt a value based upon the proof. For the reasons discussed below, the administrative judge finds it inappropriate to simply accord no weight to the cost approach in light of Mr. Ely's testimony that he did not dispute the accuracy of Mr. Osborne's assumed replacement cost and depreciation.

This hearing had a rather unusual beginning when counsel departed from his customary method of direct examination and did not ask Mr. Osborne any questions concerning his credentials, expertise in hospital valuation etc. Given that Mr. Osborne has never previously appeared before the administrative judge this seemed a rather peculiar way to proceed. Unfortunately, after the administrative judge asked Mr. Osborne a few questions at the conclusion of his testimony, it became rather apparent why Mr. Albritton proceeded as he did. Mr. Osborne testified that he is not an appraiser and was appearing as a "consultant."<sup>2</sup> He stated that his compensation was based upon a contingent fee arrangement with the taxpayer.

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<sup>2</sup> Mr. Osborne is an approved agent in Tennessee pursuant to Tenn. Code Ann. § 67-5-1514.

Mr. Osborne further testified that although Mr. Albritton was representing the taxpayer at the hearing, the taxpayer is also a client of his company, Complex Property Advisors Corporation.

Suffice it to say, Mr. Osborne has serious credibility issues and must be considered biased insofar as he has a financial stake in the outcome of the appeal and an ongoing relationship with the taxpayer. Mr. Osborne's credibility was further undermined following Mr. Ely's cross-examination with respect to the sales comparison approach. Mr. Osborne's testimony on cross-examination, in conjunction with Mr. Ely's proof concerning the sales utilized in Mr. Osborne's analysis, requires one to conclude that this approach has absolutely no probative value. Put simply, the proof established that the comparable sales relied on by Mr. Osborne involved sellers under duress. Moreover, most of the sales were from Alabama which has the lowest Medicare wage index in the country.

At this point in the proceedings, the administrative judge would have granted a motion for directed verdict/involuntary dismissal without hesitation. Unfortunately for Mr. Ely, he made the puzzling decision to forego this option and proceeded to offer evidence which he asserted supports the current appraisal of subject property. Perplexingly, the only evidence offered by Mr. Ely in support of the current appraisal of \$13,298,400 was the property record card. No evidence was offered to explain the basis for any of the figures on the property record card. Moreover, in response to questions posed by **both** Mr. Albritton and the administrative judge, Mr. Ely clearly testified that he did not dispute the accuracy of Mr. Osborne's assumed replacement cost and depreciation. Although Mr. Ely's exhibit included the Marshall & Swift hospital classifications and depreciation table, he did not offer a cost approach using Marshall & Swift nor did he maintain that Mr. Osborne's assumed replacement cost and depreciation

estimates should be modified.<sup>3</sup> Similarly, although Mr. Ely's exhibit included sales information he did not offer an opinion of value based upon those sales. Mr. Ely simply used the sales to discredit Mr. Osborne's sales comparison approach.

The administrative judge finds that the current appraisal of subject property is based upon the property record card (i.e. cost approach) developed in conjunction with the last countywide reappraisal program effective January 1, 2010. Of course, January 1, 2013 constitutes the relevant assessment date pursuant to Tenn. Code Ann. 67-5-504(a). Furthermore, the administrative judge finds that the State Board of Equalization typically values property based upon traditional methods of valuation utilized by fee appraisers (i.e. the cost, sales comparison and income approaches) rather than the value generated by the assessor's property record card. See the oft-cited case of *Devere M. Foxworth* (Polk County, Tax Year 2001) wherein the Assessment Appeals Commission ruled in relevant part as follows:

The problem with evaluating a property tax assessment on the basis of the pieces of the assessor's record is at least two-fold. First, the pieces may not compare one to another, i.e. the value attributed by the CAAS system to a typical component may not represent the true contribution of the component as represented in the subject property. Second, the pieces are part of a whole that is merely a computed generated approximation of the legal standard of fair market value. *The result for a particular property in the assessor's system may or may not yield fair market value. The appeal process therefore looks to more traditional methods of individual property valuation in order to be sure the legal standard has been met.*

[Emphasis supplied]

Final Decision and Order at 1.

As stated in footnote 1, the administrative judge will assume that the assessor's records concerning square footage are correct absent additional proof from the taxpayer on this issue. Despite the various problems with Mr. Osborne's sales comparison approach and general lack of

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<sup>3</sup> Mr. Ely's cross-examination of Mr. Osborne suggested that certain additions could have been overlooked based upon building permits referenced by Mr. Ely. Inexplicably, Mr. Ely disregarded the administrative judge's suggestion that he either place copies of the permits into evidence or at least testify about the permits.

credibility, the fact remains that his cost approach seemingly comports with generally accepted appraisal practices and was not challenged by Mr. Ely. Given that the current appraisal of subject property is based strictly upon the cost approach, the administrative judge finds it appropriate to rely on this one approach despite the fact it would obviously be more preferable to also have a sales comparison approach with probative value in the record. As previously noted, utilizing the assessor's square footage and Mr. Osborne's assumed replacement cost and depreciation results in a value indication of \$8,200,000 (rounded) which is hereby adopted as the basis of valuation for tax year 2013.

#### ORDER

It is therefore ORDERED that the following value and assessment be adopted for tax year 2013:

<u>LAND VALUE</u>	<u>IMPROVEMENT VALUE</u>	<u>TOTAL VALUE</u>	<u>ASSESSMENT</u>
\$328,300	\$7,871,700	\$8,200,000	\$3,280,000

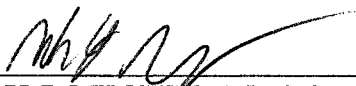
Pursuant to the Uniform Administrative Procedures Act, Tenn. Code Ann. §§ 4-5-301—325, Tenn. Code Ann. § 67-5-1501, and the Rules of Contested Case Procedure of the State Board of Equalization, the parties are advised of the following remedies:

1. A party may appeal this decision and order to the Assessment Appeals Commission pursuant to Tenn. Code Ann. § 67-5-1501 and Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization. Tennessee Code Annotated § 67-5-1501(c) provides that an appeal **“must be filed within thirty (30) days from the date the initial decision is sent.”** Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization provides that the appeal be filed with the Executive Secretary of the State Board and that the appeal **“identify the allegedly erroneous finding(s) of fact and/or conclusion(s) of law in the initial order”**; or

2. A party may petition for reconsideration of this decision and order pursuant to Tenn. Code Ann. § 4-5-317 within fifteen (15) days of the entry of the order. The petition for reconsideration must state the specific grounds upon which relief is requested. The filing of a petition for reconsideration is not a prerequisite for seeking administrative or judicial review.

**The result of this appeal is final only after the time expires for further administrative review, usually seventy-five (75) days after entry of the Initial Decision and Order if no party has appealed.**

ENTERED this 22<sup>nd</sup> day of May 2014.

  
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**MARK J. MINSKY, Administrative Judge**  
Tennessee Department of State  
Administrative Procedures Division  
William R. Snodgrass, TN Tower  
312 Rosa L. Parks Avenue, 8<sup>th</sup> Floor  
Nashville, Tennessee 37243

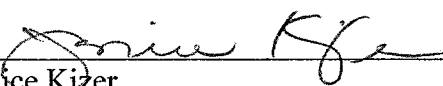
**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a true and exact copy of the foregoing Order has been mailed or otherwise transmitted to:

L. Marshall Albritton, Esq.  
Parker, Lawrence, Cantrell & Smith  
201 Fourth Avenue North, Suite 1700  
Nashville, Tennessee 37219

J. Keith Ely  
Hamblen Co. Assessor of Property  
Hamblen County Courthouse  
511 West Second North Street  
Morristown, Tennessee 37814

This the 22<sup>nd</sup> day of May 2014.

  
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Janice Kizer  
Tennessee Department of State  
Administrative Procedures Division